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3 THE HONORABLE RICHARD A. JONES
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

12 DONALD TRUMBULL,

13 Plaintiff,

14 v.

15 AMERICAN SECURITY INSURANCE
16 COMPANY,

17 Defendant.

Case No. C17-00125-RAJ

ORDER

18 This matter comes before the Court on Defendant American Security Insurance
19 Company's Motion for Partial Summary Judgment. Dkt. # 21. Plaintiff Donald
20 Trumbull opposes the Motion. Dkt. # 28. For the reasons that follow, the Court
21 **GRANTS** Defendant's Motion. Dkt. # 21.

22 **I. BACKGROUND**

23 Plaintiff owns real property at 10210 149th Avenue NE in Granite Falls,
24 Washington (the "Property"). Dkt. # 25 at ¶ 1. In January of 2013, the Property was
25 raided by law enforcement agents as a result of an illegal marijuana grow operation.
26 *Id.* at ¶ 3. On January 23, 2013, the Department of Justice recorded a *lis pendens*
against the Property. Dkt. # 25 Ex. 6. The recording of the *lis pendens* did not

1 prohibit Plaintiff from entering the Property. Dkt. # 30 Ex. A. Plaintiff learned of the
2 raid on February 10, 2013. *Id.* At that time, Plaintiff was living in Sagle, Idaho. *Id.* at
3 ¶ 5. After learning of the raid, Plaintiff visited the Property on March 14, 2013, March
4 21, 2013, and March 22, 2013. *Id.*; Dkt. # 30 Ex. B. While on the Property on March
5 21 and 22, 2013, Plaintiff documented the damage sustained on the Property with
6 photographs and video. Dkt. # 30 Ex. B. On March 23, 2013, Plaintiff received a
7 notification that forfeiture of the Property was being sought in an asset forfeiture
8 action. Dkt. # 25 Ex. 3. On April 17, 2013, Plaintiff submitted a claim to Defendant
9 for damages sustained to the Property as a result of the raid. Dkt. # 22 Ex. 1.
10 Defendant acknowledged the claim and began an investigation. Dkt. # 22 Ex. 2. On
11 April 24, 2013, Plaintiff met with an insurance adjuster at the Property. After
12 Defendant completed its investigation, it issued a claim payment of \$8,889.46 on May
13 20, 2013. Dkt. # 22 Ex. 3.

14 In August of 2013, Plaintiff was advised that the Property had been burglarized
15 of wiring, copper plumbing, and appliances. Dkt. # 25 at ¶ 12. On August 12, 2013,
16 Plaintiff submitted a second claim to Defendant related to the theft. Dkt. # 22 Ex. 4.
17 At that time, Plaintiff again visited the Property to assess the damage. Dkt. # 25 at ¶
18 12. Defendant acknowledged the claim and performed an investigation. Dkt. # 22 Ex.
19 5. On August 22, 2013, Defendant issued Plaintiff a claim payment of \$19,795.60.
20 Dkt. # 22 Ex. 6. On or about September 6, 2013, Plaintiff obtained legal counsel.
21 Plaintiff was advised not to make any changes or repairs to the Property while the
22 forfeiture proceeding was pending. Dkt. # 25 at ¶¶ 18, 19. At some point later that
23 year, Plaintiff's request for permission to chain and lock the Property's driveway
24 entrance was granted. *Id.* at ¶ 20. During the pendency of the forfeiture proceeding,
25 Plaintiff was not prohibited from obtaining estimates to repair the Property or from
26 entering the Property. Dkt. # 30 Ex. A.

1 On September 21, 2015, the criminal case related to the illegal marijuana grow
2 operation on the Property settled and the forfeiture proceeding was terminated. Dkt. #
3 25 at ¶ 22. On October 22, 2015, the U.S. Attorney's Office recorded a release of *lis*
4 *pendens* from the Property. *Id.* at ¶ 23. A couple of months later, Plaintiff retained a
5 third-party to clean the Property. Dkt. # 25 Ex. 10. Plaintiff was then advised to hire
6 an insurance specialist to prepare an estimate on the repairs. Dkt. # 25 at ¶ 32. On
7 April 22, 2016, the insurance specialist, David Zaborowski, completed his repair
8 estimate of the property. Dkt. # 25 Ex. 16. The estimate came out to \$266,044.40.
9 Dkt. # 28 at 9.

10 On December 30, 2016, Plaintiff filed this action in Snohomish County
11 Superior Court. Dkt. # 1-2. On January 27, 2017, Defendant removed this action to
12 the U.S. District Court of the Western District of Washington. Dkt. # 1. Plaintiff
13 brings state law claims of insurance bad faith, violation of the Washington Consumer
14 Protection Act, and violation of the Washington Insurance Fair Conduct Act ("IFCA").

15 II. LEGAL STANDARD

16 Summary judgment is appropriate if there is no genuine dispute as to any
17 material fact and the moving party is entitled to judgment as a matter of law. Fed. R.
18 Civ. P. 56(a). The moving party bears the initial burden of demonstrating the absence
19 of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).
20 Where the moving party will have the burden of proof at trial, it must affirmatively
21 demonstrate that no reasonable trier of fact could find other than for the moving party.
22 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). On an issue
23 where the nonmoving party will bear the burden of proof at trial, the moving party can
24 prevail merely by pointing out to the district court that there is an absence of evidence
25 to support the non-moving party's case. *Celotex Corp.*, 477 U.S. at 325. If the
26 moving party meets the initial burden, the opposing party must set forth specific facts

1 showing that there is a genuine issue of fact for trial in order to defeat the motion.
2 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The court must view the
3 evidence in the light most favorable to the nonmoving party and draw all reasonable
4 inferences in that party's favor. *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133,
5 150-51 (2000).

6 However, the court need not, and will not, "scour the record in search of a
7 genuine issue of triable fact." *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996);
8 *see also, White v. McDonnell-Douglas Corp.*, 904 F.2d 456, 458 (8th Cir. 1990) (the
9 court need not "speculate on which portion of the record the nonmoving party relies,
10 nor is it obliged to wade through and search the entire record for some specific facts
11 that might support the nonmoving party's claim"). The opposing party must present
12 significant and probative evidence to support its claim or defense. *Intel Corp. v.*
13 *Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991).

14 Uncorroborated allegations and "self-serving testimony" will not create a genuine
15 issue of material fact. *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th
16 Cir. 2002); *T.W. Elec. Serv. V. Pac Elec. Contractors Ass'n*, 809 F. 2d 626, 630 (9th
17 Cir. 1987).

18 **III. DISCUSSION**

19 An action for bad faith handling of an insurance claim is a tort subject to a three-
20 year statute of limitations. RCW 4.16.090; *Moratti v. Farmers Ins. Co. of Wash.*, 162
21 Wash. App. 495, 502 (2011). The date of accrual arises when a party has a right to apply
22 to the court for relief. *O'Neill v. Farmers Ins. Co. of Wash.*, 124 Wn. App. 516, 530
23 (2004). Similarly, IFCA claims are also subject to a three-year statute of limitations.
24 *Ward v. Stonebridge Life Ins. Co.*, No. C13-5092 RBL, 2013 WL 3155347, at *5 (W.D.
25 Wash. June 21, 2013), *aff'd*, 608 F. App'x 487 (9th Cir. 2015). IFCA claims accrue at
26 the time the insurer extends its allegedly unreasonable settlement offer or unreasonably

1 denies coverage. *Id.* Defendant's coverage determinations and claim payments to
2 Plaintiff were issued on May 20, 2013 and August 22, 2013. Plaintiff filed this action
3 on December 30, 2016, or three years and seven months after his first claim, and three
4 years and four months after his second claim. Therefore, Plaintiff's bad faith insurance
5 and IFCA claims were filed after the statute of limitations expired and are time-barred.

6 Plaintiff argues that the Court should apply the "discovery rule" exception to his
7 claims in determining whether they are time-barred. This exception has been applied
8 by courts to claims where "injured parties do not, or cannot, know they have been
9 injured." *Shepard v. Holmes*, 185 Wash. App. 730, 739 (2014) (internal citations
10 omitted). "Where the discovery rule applies, a cause of action accrues when the plaintiff,
11 through the exercise of due diligence, knew or should have known the basis for the cause
12 of action." *Id.* Plaintiff argues that he could not have reasonably been aware of the
13 present causes of action until April 22, 2016, the day after he obtained a repair estimate
14 for the Property. Dkt. # 28 at 8. It is undisputed that Plaintiff had access to his property
15 following the raid and after the alleged theft. It is also undisputed that Plaintiff was not
16 prohibited from entering the Property or obtaining an estimate for the repairs during the
17 pendency of the forfeiture proceedings and after the recording of the *lis pendens*. By
18 his own admission, Plaintiff entered his property on five occasions prior to the
19 termination of the forfeiture proceedings and the release of the *lis pendens*. Had Plaintiff
20 exercised due diligence, he would have known the basis for his claims at any time after
21 he received his claim payments. As such, the application of the discovery rule would
22 not serve to postpone the running of the statute of limitations for Plaintiff's claims.

23 Plaintiff further argues that he did not know that there was a discrepancy between
24 the repair estimate and his claim payments until 2016 because he was following the
25 advice of counsel. While Plaintiff was advised by counsel not to make any repairs
26 during the pendency of the forfeiture proceedings, he was not prohibited from obtaining

1 a repair estimate. The discovery rule does not apply to toll the statute of limitations
2 merely because Plaintiff was ignorant of the law. *See Retired Pub. Employees Council*
3 *of Washington v. State, Dep't of Ret. Sys.*, 104 Wash. App. 147, 152, 16 P.3d 65, 68
4 (2001). Plaintiff's bad faith insurance and IFCA claims were filed after the expiration
5 of the statute of limitations and are time-barred. Defendant's motion for summary
6 judgment of Plaintiff's bad faith insurance and IFCA claims is **GRANTED**. Dkt. # 21.

7 **IV. CONCLUSION**

8 For all the foregoing reasons, the Court **GRANTS** Defendant's Motion for
9 Partial Summary Judgment. Dkt. # 21.

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11 Dated this 9th day of August, 2018.

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15 The Honorable Richard A. Jones
16 United States District Judge
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